

DONALD H. CRAM, III (State Bar No. 160004)
KATRINA V. STOLC (State Bar No. 226557)
MARK D. LONERGAN (State Bar No. 143622)
SEVERSON & WERSON, P.C.
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
Telephone: (415) 677-5536
Facsimile: (415) 677-5664
e-mail: dhc@severson.com

Attorneys for Creditor
WFS FINANCIAL, INC.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re
RHONDA PATRYCE FIELDS,
Debtor(s).

Case No. 06-41890-EDJ

Chapter 13

Date:

Time:

Judge: Hon. Edward D. Jellen

Place: 1300 Clay Street

Room 215

Oakland, CA 94612

OBJECTION OF WFS FINANCIAL, INC. TO CONFIRMATION OF PLAN

TO THE DEBTOR, DEBTOR'S ATTORNEY OF RECORD, THE CHAPTER 13
TRUSTEE, AND ALL OTHER INTERESTED PARTIES:

WFS Financial, Inc. (hereinafter "Secured Creditor") objects to the Chapter 13 Plan
(hereinafter "Plan") of the above captioned debtor(s) (hereinafter "Debtor") for the following
reasons:

STATEMENT OF FACTS:

Secured Creditor has a perfected security interest in Debtor's 2004 Kia Optima, Vehicle
Identification No. KNAGD128145277922 (hereinafter "Vehicle") pursuant to a Motor Vehicle
Contract & Security Agreement dated 3/12/2004 (hereinafter "Contract"), entered into between

1 Debtor and Secured Creditor's predecessor-in-interest ("Dealer"). A true and correct copy of the
2 Contract is attached hereto as Exhibit A. Upon execution of the Contract Debtor was obligated to
3 pay Secured Creditor \$11,387.43 at an annual percentage rate of 4.75% over 66 monthly
4 payments of \$196.78.

5 The net payoff under the Debtor's Contract, as of the petition date, was \$7,221.69 and the
6 Debtor's Plan proposes to value the Vehicle at \$5,000.00, payable at 8.00% with a monthly
7 payment of \$50.

8 **THE PLAN'S PROPOSED VEHICLE VALUE FAILS TO PROVIDE THE PRESENT**
9 **VALUE OF SECURED CREDITOR'S CLAIM AS REQUIRED**
10 **BY 11 U.S.C. § 1325(a)(5)(B)(ii)**

11 Secured Creditor objects to confirmation of Debtors' Plan on the grounds that paying only
12 \$5,000.00 towards Secured Creditor's claim on the Vehicle fails to provide Secured Creditor with
13 the full value of its claim in violation of 11 U.S.C. § 1325(a)(5)(B)(ii). Section 506(a) provides
14 that value with respect to personal property securing an allowed claim shall be determined based
15 on the replacement value of such property as of the date of the filing of the petition. With respect
16 to property acquired for personal, family, or household purposes, replacement value shall mean
17 the price a retail merchant would charge for property of the kind considering the age and
18 condition of the property at the time value is determined. 11 U.S.C. §506(a)(2).

19 The Kelley Blue Book retail value is \$14,795 for a vehicle of like make, model, and
20 condition. A copy of the applicable Kelley Blue Book printout is attached hereto as Exhibit B. In
21 this case, the type of Debtor and nature of the collateral point to the Kelley Blue Book as the best
22 indicator of the Vehicle's replacement (market) value. The Debtor is an individual who proposes
23 to retain the Vehicle for personal use. The Debtor's replacement (market) value of the Vehicle
24 will be determined by the retail market places where individuals purchase automobiles for such
25 personal use. Secured Creditor contends that the Kelley Blue Book retail value, which is \$14,795
26 for this Vehicle, supplies the best evidence of such market place. Therefore, in order to confirm
27 the Plan over Secured Creditor's objection, the Plan must provide for a collateral value of Secured
28 Creditor's claim in the full amount of \$7,221.69.

1 **THE PLAN'S PROPOSED INTEREST RATE FAILS TO PROVIDE THE PRESENT**
2 **VALUE OF SECURED CREDITOR'S CLAIM AS REQUIRED**
3 **BY 11 U.S.C. § 1325(a)(5)(B)(ii)**

4 Secured Creditor objects to confirmation of Debtors' Plan on the grounds that the 8.00%
5 interest scheduled to be paid towards Secured Creditor's claim on the Vehicle is in violation of 11
6 U.S.C. § 1325(a)(5)(B)(ii). In a recent ruling by the Supreme Court, the court held that
7 §1325(a)(5)(B) does not require that the terms of the cram down loan match the terms to which
8 the debtor and creditor agreed prebankruptcy, nor does it require that the cram down terms make
9 the creditor subjectively indifferent between present foreclosure and future payment." *Lee M. Till*
10 *et ux. v. SCS Credit Corporation, 124 S.Ct. 1951 (2004)*. The court ruled that the formula
11 approach is the correct method for determining the cram down rate of interest on the secured
12 value of a vehicle being paid through a Chapter 13 Plan. This approach looks to the national
13 prime rate and requires the bankruptcy court to adjust this rate upwards to compensate the creditor
14 for the "greater risk of nonpayment" bankruptcy debtors frequently pose. The factors to review in
15 determining the adjustment to the national prime rate of interest include the estate's
16 circumstances, the security's nature, and the reorganization plan's duration and feasibility.

17 In this particular case, the Vehicle is a rapidly depreciating asset. Secured Creditor
18 requests that the Court's formula approach should look to the national prime rate, which was
19 8.25% at the time of Debtor's petition, and adjust that rate upward by at least 3% in order for
20 Secured Creditor to receive 11.25% interest on its claim. This prime-plus rate of 11.25% would
21 compensate Secured Creditor for the greater risk of nonpayment that Debtor now poses.

22 **THE PLAN'S PROPOSED MONTHLY PAYMENT FAILS TO PROVIDE THE**
23 **PRESENT VALUE OF SECURED CREDITOR'S CLAIM AS REQUIRED**
24 **BY 11 U.S.C. § 1325(a)(5)(B)(iii)**

25 Secured Creditor objects to confirmation of Debtor's Plan on the grounds that the
26 proposed monthly payment of \$50 fails to adequately compensate or protect Secured Creditor
27 from the monthly depreciation of the Vehicle over the life of the Plan and therefore, the Plan fails
28 to provide for the present value of Secured Creditor's claim as required by 11 U.S.C. §
29 1325(a)(5)(B)(iii).

1 With respect to each allowed secured claim provided for by the plan;

2 (iii) if –

- 3 (I) property to be distributed pursuant to this subsection is in the form of
4 periodic payments, such payments shall be in equal monthly amounts; and
- 5 (II) the holder of such claim is secured by personal property, the amount of
6 such payments shall not be less than an amount sufficient to provide to the
7 holder of such claim adequate protection during the period of the plan.

8 11 U.S.C. § 1325(a)(5)(B)(iii)

9 Debtor's monthly Plan payment to the Trustee is \$300 with a proposed monthly payment
10 to Secured Creditor of \$50. Debtor's proposed monthly payment to Secured Creditor does not
11 comply with 11 U.S.C. § 1325(a)(5)(B)(iii) since that monthly payment is not in equal
12 installments and doesn't cover the monthly depreciation of the Vehicle, which serves as collateral
13 for Secured Creditor's claim. Therefore, Debtor's Plan as proposed cannot be confirmed and
14 Secured Creditor requests that the Plan be amended to provide it with a minimum monthly
15 payment of at least \$120 commencing with the first Plan payment. .

16 **THE PLAN CANNOT BE CONFIRMED BECAUSE IT IS NOT FEASIBLE AS
17 REQUIRED BY 11 U.S.C. § 1325(a)(6)**

18 Secured Creditor objects to confirmation of Debtors' Plan on the grounds that the Debtor's
19 proposed schedule of plan payments is not feasible. Debtor's Plan calls for direct payments of
20 \$892.00 to Green Point Mortgage and \$2,491.00 to GMAC Mortgage. Yet, Debtor's Schedule J –
21 Expenses lists only the \$892.00 monthly payment. A true and correct copy of Debtor's Schedule
22 J – Expenses is attached hereto as Exhibit C. Debtor has provided no competent evidence as to
23 how she will be able to make the mortgage payments and successfully prosecute a Plan. Absent
24 additional competent evidence from the Debtor supporting their ability to make the mortgage
25 payments and successfully prosecute a Plan, it does not appear that the Plan is feasible.
26 Therefore, confirmation of Debtor's Plan should be denied because the Debtor will be unable to
27 make all the plan payments and comply with the terms of the Plan as required by § 1325(a)(6).

1 **CONCLUSION:**

2 WHEREFORE, Secured Creditor respectfully requests that the Court sustain its
3 objection(s) and deny confirmation of Debtor's proposed Plan. Alternatively, Secured Creditor
4 requests the Court order that:

5 1. The Debtor's Plan be amended to provide for Secured Creditor's claim to be
6 secured in the full amount of \$7,221.70;

7 2. The Debtor's Plan be amended to provide for Secured Creditor to receive at least
8 11.25% interest on its secured claim from the effective date of the Debtor's Plan;

9 3. The Debtor's Plan be amended to provide for Secured Creditor to receive monthly
10 payments in the amount of at least \$120, on account of its secured claim, from the effective date
11 of the Debtor's Plan;

12 4. The Debtor's Plan not be confirmed until Debtor has provided competent evidence
13 as to how Debtor will make the mortgage payments and successfully prosecute a Plan;

14 5. Secured Creditor be awarded its reasonable attorneys' fees and costs incurred in
15 protecting its security interest by objecting to the Debtor's proposed Plan; and

16 6. Secured Creditor be afforded such further relief as this Court deems necessary and
17 proper.

18 DATED: December 8, 2006

19 SEVERSON & WERSON, P.C.

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21 By: /s/ Katrina Stolc
Donald H. Cram, III / Katrina V. Stolc

22 Attorneys for WFS Financial, Inc.
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